



DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO CA 95814-2922

REPLY TO  
ATTENTION OF

July 9, 2014

Regulatory Division SPK-2014-00062

Ms. Tricia Parker-Hamelberg  
US Fish and Wildlife Service  
10950 Tyler Road  
Red Bluff, California 96080

RECEIVED

JUL 14 2014

U.S. ARMY  
RED BLUFF FWO

Dear Ms. Parker-Hamelberg:

We are responding to your February 26, 2014, request for a preliminary jurisdictional determination (JD), in accordance with our Regulatory Guidance Letter (RGL) 08-02, for the Hammer Diversion Fish Passage Improvement project site. The site is located on or near South Fork Cottonwood Creek, Section 12, Township 26 North, Range 8 West, Mount Diablo Meridian, Latitude 40.1233145729086°, Longitude -122.721741618517°, Tehama County, California.

Based on available information, **we concur with the amount and location of wetlands and/or other water bodies on the site as depicted on the enclosed January 2014, Figure 4, Preliminary Delineation Map drawing prepared by Tehama Environmental Solutions.** The approximately 1.68 acres of wetlands and other water bodies present within the survey area are potential waters of the United States regulated under Section 404 of the Clean Water Act.

We have enclosed a copy of the *Preliminary Jurisdictional Determination Form* for this site. Please sign and return a copy of the completed form to this office. You should not start any work in potentially jurisdictional waters of the United States unless you have Department of the Army permit authorization for the activity. You may request an approved JD for this site at any time prior to starting work within waters. In certain circumstances, as described in RGL 08-02, an approved JD may later be necessary.

You should provide a copy of this letter and notice to all other affected parties, including any individual who has an identifiable and substantial legal interest in the property.

This preliminary determination has been conducted to identify the potential limits of wetlands and other water bodies which may be subject to Corps of Engineers' jurisdiction for the particular site identified in this request. A Notification of Appeal Process and Request for Appeal form is enclosed to notify you of your options with this determination. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are U.S. Department of Agriculture (USDA) program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work.

We are also responding to your February 26, 2014, request for a Department of the Army permit for the Hammer Diversion Fish Passage Improvement project. This project involves activities, including discharges of dredged or fill material, in waters of the United States to remove

the existing dam and install a water intake pump facility and fish screen.

Based on the information you provided, the proposed activity, resulting in the permanent impacts to approximately 0.18 acres of South Fork Cottonwood Creek for the dam removal, is authorized by Nationwide Permit Number NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement. Your work must comply with the general terms and conditions listed on the enclosed Nationwide Permit information sheets and regional conditions, and the following special conditions:

#### Special Conditions

1. Within 10 days prior to initiation of construction activities within waters of the U.S., you shall submit to the Corps pre-construction site and aerial photographs of the project site, which have been taken no more than 60 days prior to initiation of construction activities. Within 30 days following construction activities, you shall submit post-construction photographs of the project site, showing the work conducted, to the Corps. The camera positions and view angles of post-construction photographs shall be identified on a map, aerial photo, or project drawing. Construction locations shall include all major project features and waters of the U.S., including mitigation areas.
2. To ensure your project complies with the Federal Endangered Species Act, you must implement all of the mitigating measures proposed as part of your project description, which are identified in the U.S. Fish and Wildlife Service letter of concurrence (Number 08ESMF00-2014-I-0367, dated April 23, 2014). If you are unable to implement any of the proposed measures, you must immediately notify the Corps and the U.S. Fish and Wildlife Office so we may consult as appropriate, prior to initiating the work, in accordance with Federal law.
3. This Corps permit does not authorize you to take an endangered species, in particular Central Valley steelhead (*Oncorhynchus mykiss*), or designated critical habitat. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (e.g., an Endangered Species Act Section 10 permit, or a Biological Opinion under Endangered Species Act Section 7, with "incidental take" provisions with which you must comply). National Marine Fisheries Service Biological Opinion (Number WCR-2014-1005, dated June 26, 2014), contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the Biological Opinion. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with "incidental take" of the attached Biological Opinion, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the Biological Opinion, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The National Marine Fisheries Service is the appropriate authority to determine compliance with the terms and conditions of their Biological Opinion, and with the Endangered Species Act. You must comply with all conditions of this Biological Opinion, including those ascribed to the Corps.
4. To ensure your project complies with the Magnuson-Stevens Fishery and Consultation Act, you must implement all of the mitigating measures and Essential Fish Habitat Recommendations identified in the above National Marine Fisheries document, including those ascribed to the Corps therein.

5. You shall notify the Corps of the start and completion dates for each phase of the authorized work within 10 calendar days prior to initiation of construction activities within waters of the U.S. and 30 calendar days following completion of construction activities.

You must sign the enclosed Compliance Certification and return it to this office within 30 days after completion of the authorized work.

This verification is valid until March 18, 2017, when the existing Nationwide Permits are scheduled to be modified, reissued, or revoked. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant NWP is modified, reissued or revoked, you will have twelve (12) months from the date of the modification, reissuance or revocation of the NWP to complete the activity under the present terms and conditions. Failure to comply with the General and Regional Conditions of this Nationwide Permit, or the project-specific Special Conditions of this authorization, may result in the suspension or revocation of your authorization.

We would appreciate your feedback. At your earliest convenience, please tell us how we are doing by completing the customer survey on our website under *Customer Service Survey*.

Please refer to identification number SPK-2014-00062 in any correspondence concerning this project. If you have any questions, please contact Matthew Kelley at Redding Regulatory Office, 310 Hemsted Drive, Suite 310, Redding, California 96002, by email at [Matthew.P.Kelley@usace.army.mil](mailto:Matthew.P.Kelley@usace.army.mil), or telephone at 530-223-9534. For more information regarding our program, please visit our website at [www.spk.usace.army.mil/Missions/Regulatory.aspx](http://www.spk.usace.army.mil/Missions/Regulatory.aspx).

Sincerely,



Matthew Kelley  
Chief, Redding Regulatory Office

Enclosures

cc: (w/o encls)

Mr. Jeff Souza, Tehama Environmental Solutions, 910 Main Street, Suite D, Red Bluff, California 96080

Mr. Guy Chételat, Regional Water Quality Control Board, 364 Knollcrest Drive, Suite 200, Redding, California 96002

Mr. Jason Brush, Environmental Protection Agency, WRT-8, 75 Hawthorne Street, San Francisco, California 94105-3901

## COMPLIANCE CERTIFICATION

**Permit File Name:** Hammer Diversion Fish Passage Improvement project

**Permit File Number:** SPK-2014-00062

**Nationwide Permit Number:** NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities.

**Permittee:** Tricia Parker-Hamelberg  
US Fish and Wildlife Service  
10950 Tyler Road  
Red Bluff, California 96080

**County:** Tehama

**Date of Verification:** July 9, 2014

Within 30 days after completion of the activity authorized by this permit, sign this certification and return it to the following address:

U.S. Army Corps of Engineers  
Sacramento District  
310 Hemsted Drive, Suite 310  
Redding, California 96002  
*DLL-CESPK-RD-Compliance@usace.army.mil*

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the terms and conditions of the permit your authorization may be suspended, modified, or revoked. If you have any questions about this certification, please contact the U.S. Army Corps of Engineers.

\* \* \* \* \*

***I hereby certify that the work authorized by the above-referenced permit, including all the required mitigation, was completed in accordance with the terms and conditions of the permit verification.***

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date



# PRELIMINARY JURISDICTIONAL DETERMINATION FORM

## Sacramento District

This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

Regulatory Branch: **California North** File/ORM #: **SPK-2014-00062**

PJD Date: **July 9, 2014**

State: **CA** City/County: **, Tehama County**  
Nearest Waterbody: **South Fork Cottonwood Creek**

Location (Lat/Long): **40.1233145729086°, -122.721741618517°**

Size of Review Area: \_\_\_\_\_ acres

Name/Address  
Of Property **Tricia Parker-Hammelberg**  
Owner/ **US Fish and Wildlife Service**  
Potential **10950 Tyler Road**  
Applicant **Red Bluff, California 96080**

### Identify (Estimate) Amount of Waters in the Review Area

#### Non-Wetland Waters:

linear feet \_\_\_\_\_ ft wide **0.90** acre(s)  
Stream Flow: **Mixed**

**Wetlands:** **0.78** acre(s)  
Cowardin Class: **Mixed**

Name of any Water Bodies Tidal:  
on the site identified as  
Section 10 Waters: Non-Tidal:


☒ Office (Desk) Determination  
☐ Field Determination:  
Date(s) of Site Visit(s):

**SUPPORTING DATA:** Data reviewed for preliminary JD (check all that apply – checked items should be included in case file and, where checked and requested, appropriately reference sources below)

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
- ☐ Data sheets prepared by the Corps.
- ☐ Corps navigable waters' study.
- ☐ U.S. Geological Survey Hydrologic Atlas:
  - ☐ USGS NHD data.
  - ☐ USGS HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: **1:24K; CA-RAGLIN RIDGE**
- ☐ USDA Natural Resources Conservation Service Soil Survey.
- ☐ National wetlands inventory map(s).
- ☐ State/Local wetland inventory map(s).
- ☐ FEMA/FIRM maps.
- ☐ 100-year Floodplain Elevation (if known):
- ☒ Photographs: ☒ Aerial  
☐ Other
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Other information (please specify):

**IMPORTANT NOTE:** The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

  
Signature and Date of Regulatory Project Manager  
(REQUIRED) **7-9-14**

  
Signature and Date of Person Requesting Preliminary JD  
(REQUIRED, unless obtaining the signature is impracticable) **7-15-14**

### EXPLANATION OF PRELIMINARY AND APPROVED JURISDICTIONAL DETERMINATIONS:

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "preconstruction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Tricia Parker-Hammelberg, US Fish and Wildlife Service	File No.: SPK-2014-00062	Date: July 9, 2014
Attached is:		See Section below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D
<input checked="" type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E

**SECTION I -** The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at [http://www.usace.army.mil/cecw/pages/reg\\_materials.aspx](http://www.usace.army.mil/cecw/pages/reg_materials.aspx) or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer (address on reverse). This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer (address on reverse). This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer (address on reverse). This form must be received by the division engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

Matthew Kelley  
Chief, Redding Regulatory Office  
U.S. Army Corps of Engineers  
310 Hemsted Drive, Suite 310  
Redding, California 96002  
Phone: 530-223-9534, FAX 916-557-7803  
Email: Matthew.P.Kelley@usace.army.mil

If you only have questions regarding the appeal process you may also contact:

Thomas J. Cavanaugh  
Administrative Appeal Review Officer  
U.S. Army Corps of Engineers  
South Pacific Division  
1455 Market Street, 2052B  
San Francisco, California 94103-1399  
Phone: 415-503-6574, FAX 415-503-6646  
Email: Thomas.J.Cavanaugh@usace.army.mil

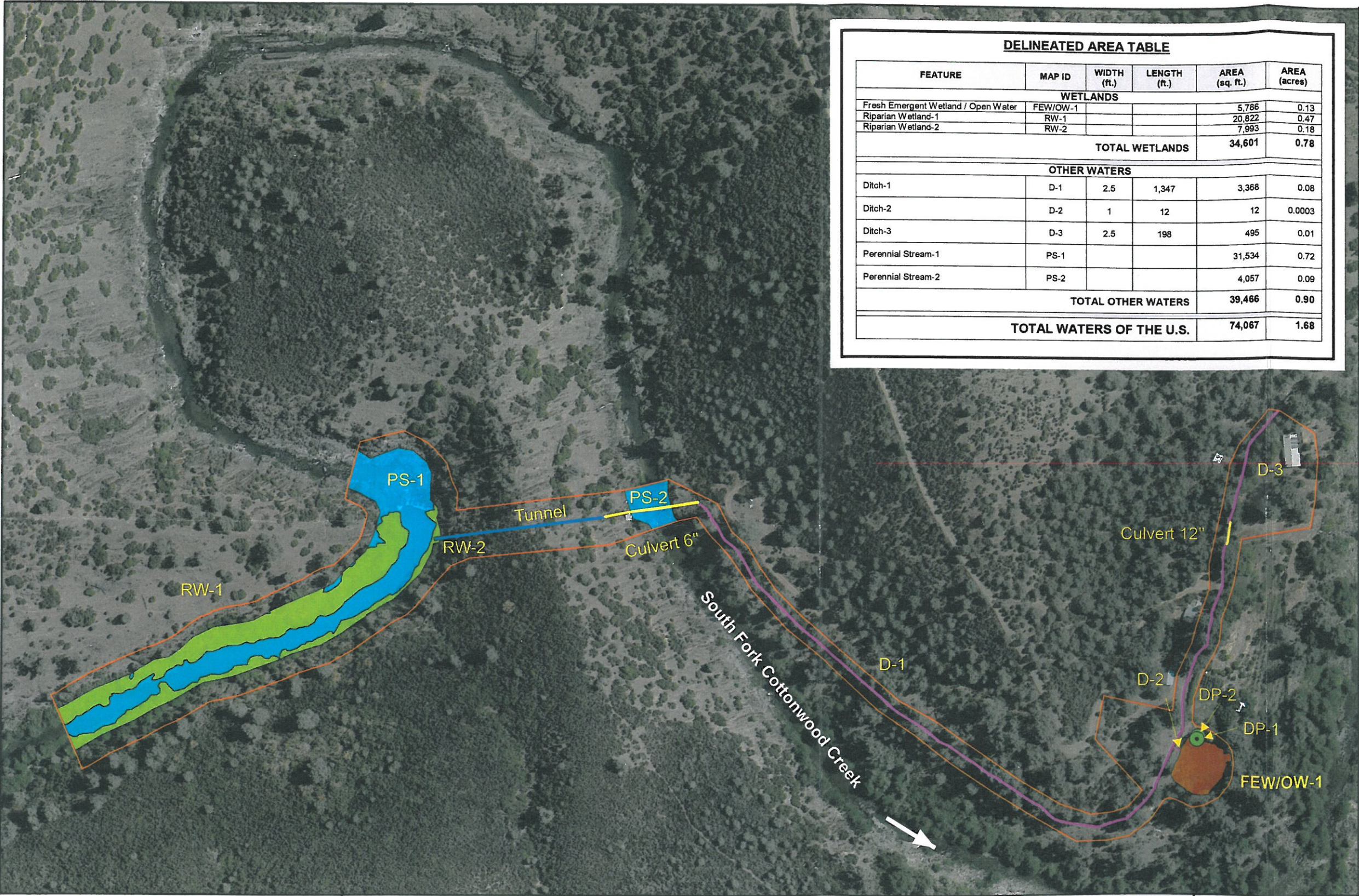
**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

\_\_\_\_\_  
Signature of appellant or agent.

Date:

Telephone number:





DELINEATED AREA TABLE					
FEATURE	MAP ID	WIDTH (ft.)	LENGTH (ft.)	AREA (sq. ft.)	AREA (acres)
WETLANDS					
Fresh Emergent Wetland / Open Water	FEW/OW-1			5,786	0.13
Riparian Wetland-1	RW-1			20,822	0.47
Riparian Wetland-2	RW-2			7,993	0.18
TOTAL WETLANDS				34,601	0.78
OTHER WATERS					
Ditch-1	D-1	2.5	1,347	3,368	0.08
Ditch-2	D-2	1	12	12	0.0003
Ditch-3	D-3	2.5	198	495	0.01
Perennial Stream-1	PS-1			31,534	0.72
Perennial Stream-2	PS-2			4,057	0.09
TOTAL OTHER WATERS				39,466	0.90
TOTAL WATERS OF THE U.S.				74,067	1.68

Legend

Study Area

Fresh Emergent Wetland / Open Water

Riparian Wetland

Ditch

Perennial Stream

Tunnel

Culvert

Data Point

FIGURE 4  
Preliminary Delineation Map

DELINEATION/GPS SURVEY

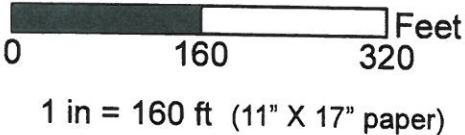
Jeff Souza  
Ben Myhre  
Tehama Environmental Solutions, Inc.

CLIENT



3950 Industrial Blvd, Ste 100c  
West Sacramento, CA 95691

SCALE



January 2014

**TEHAMA**  
ENVIRONMENTAL SOLUTIONS, INC.  
910 Main Street, Suite D, Red Bluff, CA 96080  
(530) 528-8272  
www.tehamaenvironmental.com

**Delineation of Waters of the U.S.**  
Hammer Diversion on South Fork Cottonwood Creek  
Fish Passage Improvement Project  
Tehama County, California



NOTE: DELINEATION SHOULD BE CONSIDERED PRELIMINARY UNTIL VERIFIED BY THE U.S. ARMY CORPS OF ENGINEERS

PHOTO SOURCE: Google Earth, July, 2012